

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I pertaining to expansion of adult)
community corrections contracted)
treatment facilities or programs)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 19, 2011, at 9:00 a.m., the Department of Corrections will hold a public hearing in Room 3-34 of 5 South Last Chance Gulch, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 10:00 a.m. on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov.

3. The rule proposed to be adopted effective October 1, 2011, provides as follows:

NEW RULE I INCREASE IN CONTRACT CAPACITY (1) The Department of Corrections may biennially increase the department contract capacity by not more than 25 percent for a contracted treatment facility or program that was established through competitive bidding.

(2) The department may biennially increase the contract capacity of a contracted treatment facility or program by more than 25 percent but less than 50 percent for a treatment facility or program that was established through competitive bidding if:

(a) the department has determined, in writing, that the increase is in the best interest of the department;

(b) the increase does not change the nature of the contracted services provided in the facility or program; and

(c) the current contract has at least twenty-four months remaining, including renewals, before expiration.

(3) Before the department executes a contract amendment for an increase of more than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to expand the existing treatment facility or program.

(a) The department must publish the notice not less than 90 days in advance of the proposed expansion date.

(b) The notice must request potential contractors to notify the department, in writing, of their interest in providing the same services.

(c) The notice must request potential contractors to provide proof to the department that the potential contractor has the ability to provide the contracted services.

(d) Notice is considered accomplished under this subsection if the department publishes the notice on its web site and sends such notice to each existing department treatment facility or program provider.

(e) The department shall set a reasonable deadline for potential contractors to notify the department.

(f) If the department receives notification under this subsection from a valid potential contractor who is able to provide such services, the department may not proceed without opening up the expansion to competitive bidding.

(4) The department must engage in the competitive procurement process in order to increase by more than 50 percent the contract capacity of a treatment facility or program that was established through the competitive procurement process or to increase the contract capacity of a treatment facility or program that was not established through competitive procurement.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The 62nd Montana Legislature enacted Senate Bill 72 which mandates the department adopt rules necessary for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process. The department proposes to adopt New Rule I to comply with Senate Bill 72.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov, and must be received no later than 5:00 p.m., August 25, 2011.

5. Diana L. Koch, Department of Corrections, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Myrna Omholt-Mason, 5 South Last Chance Gulch, Helena, Montana, 59620 or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on June 10, 2011, and by phone on June 29, 2011.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 18, 2011.